appellants. There was just no evidence as to the genuineness of the merchandize.

For the above reasons, I am of the view that the conviction of the appellants on the charge cannot be sustained. I set it aside and order that the fine of $2,000 be refunded and the 17,246 bottles be returned to the appellants.

Appeal allowed.

Solicitors: *Lee & Lee.*

SEOW PUAY SENG v. PUBLIC PROSECUTOR

[A.Cr.J. (Chan Sek Keong J.C.) 15 February 1988]

[Singapore – Magistrate's Appeal No. 365 of 1987]

Criminal Procedure – Sentencing – Section 224(c)(iii) of Criminal Procedure Code – Explanation of – Whether sentences of imprisonment given in default of payment of fines excessive and/or wrong in law – Factors to consider – Criminal Procedure Code (Cap. 68, 1985 Ed.), ss. 224(b)(iv) & 224(c)(iii)(B) & (C).

The appellant was convicted of four offences under the Films Act as follows:

(a) making video tapes without a licence under section 6(1) of the Act;

(b) distributing uncensored video tapes under section 6(1);

(c) having in his possession 217 video tapes without a valid certificate authorizing the exhibition thereof under section 21(1) of the Act;

(d) having possession of an obscene video tape under section 29(1) of the Act.

He was sentenced to a fine of $5,000 (in default three months' imprisonment) on the first charge; a fine of $5,000 (in default three months' imprisonment) on the second charge; a fine of $100 per tape (in default three days' imprisonment) for each tape on the third charge and a fine of $500 (in default five weeks' imprisonment) on the fourth charge.

The first and second charge did not specify the number of video tapes that the appellant allegedly made or distributed.

The first submission by defence counsel was that the default sentences on the first and second charges were excessive in that they bore no proportion to the maximum penalty that could be suffered by the accused. The second submission was that by imposing a default sentence of 651 days' imprisonment in respect of the third charge, the district judge had erred in law as the maximum default sentence, by virtue of section 224(c)(iii)(C) of the Criminal Procedure Code, was only six months and therefore the default sentence of 651 days' imprisonment exceeded the maximum punishment allowed by the law.

The respondent submitted that the sentence on the third charge was correct as section 224(c)(iii) applies to each fine. According to the respondent, each of the fines falls within section 224(c)(iii)(B) of the Code and therefore the total default sentence may exceed four months.

Held, allowing the appeal: (1) sub-paragraphs (A), (B) and (C) of section 224(c)(iii) must be read subject to the terms of the main paragraph (c) which refers to "the offence". The offence was not having unlawful possession of one tape but of 217 tapes. There was only one offence. Although a fine was imposed for each tape, the total fines on all the tapes constitute the collective punishment for that one offence. Accordingly, the default sentence on the total fine of $21,700 must fall within sub-paragraph (C) which provides that the default term of imprisonment shall not exceed six months;

(2) as the appellant was a first offender and as the culpability of the accused in respect of the first three charges overlapped to a certain extent, the default sentences on the first and second charges were excessive even though they cannot be said to have ignored the principle of proportionality in sentencing. The sentence on the third charge was wrong in law and the default sentence had the effect of a maximum sentence against a first offender. Even taking into account the large number of tapes involved in the offence, the sentence was still excessive. The sentence on the fourth charge ignores the principle of proportionality in sentencing;

(3) taking into account the fact that the appellant was charged with making a tape rather than a big number of tapes, the benefit of the doubt should be given to the accused since the charge did not specify the number of tapes that was involved and the facts showed that at the time of the police raid only one tape was in the process of being made. Similarly, taking into account the situation that the charge of distributing tapes did not specify the number being distributed and after considering all the above factors, the following default sentences should be adequate. On the first charge, the sentence should be one and a half months; on the second charge one and a half; on the third charge four months and on the fourth charge two weeks.

MAGISTRATE'S APPEAL.

Amarjit Singh for the appellant.

Jasvender Kaur (Ms) (Deputy Public Prosecutor) for the respondent.

Chan Sek Keong J.C. (delivering oral judgment): In this appeal, the appellant was convicted of four offences under the Films Act as follows:

(1) making video tapes without a licence under section 6(1) of the Act;

(2) distributing uncensored video tapes under section 6(1);

(3) having in his possession 217 video tapes without a valid certificate authorizing the exhibition thereof under section 21(1) of the Act;

(4) having possession of an obscene video tape under section 29(1) of the Act.

He was sentenced as follows:

First charge: Fine of $5,000 and in default thereof three months' imprisonment.

Second charge: Fine of $5,000 and in default thereof three months' imprisonment.

Third charge: Fine of $100 per tape (totalling $21,700) and in default thereof three days for each tape (totalling 651 days);

Fourth charge: Fine of $500 and in default thereof five weeks' imprisonment.

Because the appellant has not been able to pay any of the fines, all the default punishments have taken effect. Because the default sentences of imprisonment run consecutively, the court having no power to make them run concurrently by virtue of section 224(b)(iv) of the Criminal Procedure Code, the result is that the appellant will have to serve about 29 months in prison.

The facts adduced in evidence showed that upon a raid conducted by officers from the Board of Film Censors, 219 video tapes were found in the premises of the accused's sister. The accused pleaded guilty to the four charges. It should be noted that the first charge and the second charge do not specify the number of video tapes he was accused of having made or distributed whereas the third charge specified 217 video tapes in his possession. That being the case, it would appear that the accused has been charged for three separate offences for what was essentially one composite unlawful act on his part, *i.e.* he was making video tapes for the purpose of distribution.

Two points arise in this appeal. The first is that the default sentences on the first and second charges were excessive in that they bore no proportion to the maximum penalty that could be suffered by the accused. The maximum fine that can be imposed under section 6(1) of the Films Act is $20,000 and the maximum default sentence is six months by virtue of section 224(c)(iii) of the Criminal Procedure Code. The default sentence should therefore be one and a half months. That is the submission.

The second point is that by imposing a default sentence of 651 days' imprisonment in respect of the third charge, the district judge has erred in law as the maximum default sentence, by virtue of section 224(c)(iii)(C) of the Criminal Procedure Code, is only six months and therefore the default sentence of 651 days' imprisonment exceeded the maximum punishment allowed by the law.

The Deputy Public Prosecutor submitted that the sentence on the third charge is correct as section 224(c)(iii) applies to each fine. If I understand her argument, what the Deputy Public Prosecutor is submitting is that each of the fines falls within section 224(c)(iii)(B) of the Code and therefore the total default sentence may exceed four months.

I do not agree with the construction of section 224(c)(iii) contended for by the Deputy Public Prosecutor. Sub-paragraphs (A), (B) and (C) of that provision must be read subject to the terms of the main paragraph (c) which refers to "the offence". The offence here was not having unlawful possession of one tape but of 217 tapes. There was only one offence. Although a fine was imposed for each of the tapes, the total fines on all the tapes constitute the collective punishment for that one offence. Accordingly, the default sentence on the total fine of $21,700 must fall within sub-paragraph (C) which provides that the default term of imprisonment shall not exceed six months. I therefore agree with the submission of counsel for the appellant on this point.

As the appellant is a first offender and as the culpability of the accused in respect of the first three charges overlapped to a certain extent, I am of the view that the default sentences on the first and second charges are excessive, even though they cannot be said to have ignored the principle of proportionality in sentencing. The sentence on the third charge is wrong in law and the default sentence has the effect of a maximum sentence against a first offender. However, I must take into account the large number of tapes involved in the offence. Even then, I find it excessive. The sentence on the fourth charge ignores the principle of proportionality in sentencing.

Taking into account the fact that the accused was charged with making one tape rather than a big number of tapes in this respect, I have to give the benefit of doubt to the accused since the charge itself does not specify the number of tapes that was involved and the facts showed that at the time

of the police raid only one tape was in the process of being made and taking into account the similar situation that the charge of distributing tapes did not specify the number being distributed and all the other factors that I have considered earlier, I have formed the view that the following default sentences should be adequate: first charge – one and a half months; second charge – one and a half months; third charge – four months; fourth charge – two weeks. And so I order.

Appeal allowed.

Solicitors: *Amarjit Rubin & Partners.*

MATERIAL TRADING PTE. LTD. (IN LIQUIDATION) v. DBS FINANCE LTD.

[O.C.J. (Thean J.) 15 February 1988]

[Singapore – Originating Summons No. 150 of 1987]

Land Law – Overhead cranes on steel runways – Overhead cranes not attached to buildings but steel runways attached to buildings – Whether overhead cranes fixtures or chattels.

The plaintiffs were the lessees of two plots of land. The defendants were the mortgagees of the land by virtue of four instruments of mortgages.

On the land, there were two warehouses used for the storage of hardware materials. Three overhead cranes were installed in the warehouses. The issue in the present case was whether these cranes were fixtures or chattels.

Two of the cranes had a single steel girder while the third had a double steel girder. All of them rested on end truck frames. The girders and the end truck frames were not attached to any part of the buildings but were mounted on steel runways. The wheels of each of the end truck frame rested on and moved along the steel runways. The steel runways were, however, attached to the buildings.

The liquidators of the plaintiffs sought, *inter alia*, a declaration that the overhead cranes were chattels.

Held, dismissing the application: (1) the question whether the cranes were fixtures or movables is a mixed question of law and fact depending upon the intention with which they must be taken to have been placed in the warehouses, and the circumstances mainly to be considered as indicating the intention are the degree of annexation and the object of annexation;

(2) the steel runways were an integral part of the cranes and the cranes, through the steel runways, were physically attached to the structures of the buildings;

(3) the plaintiffs in building the warehouses had the specifications of the cranes in mind and in installing the cranes therein intended that they should remain there permanently to serve the warehouses, *i.e.* moving heavy materials and articles within the warehouses;

(4) the overhead cranes were fixtures and passed to the defendants, the mortgagees.

Cases referred to:

(1) *Hutchinson* v. *Kay* (1857) 23 Beav. 413; 53 E.R. 163 (distd).
(2) *Hulme* v. *Brigham and Anor.* [1943] 1 All E.R. 204 (distd).
(3) *Holland and Anor.* v. *Hodgson and Anor.* (1872) L.R. 7 C.P. 328 (follD).
(4) *Reynolds* v. *Ashby & Son* [1904] A.C. 466 (refd).
(5) *D'Eyncourt* v. *Gregory* (1866) L.R. 3 Eq. 382 (refd).
(6) *Monti* v. *Barnes* [1901] 1 Q.B. 205 (refd).
(7) *Vaudeville Electric Cinema Ltd.* v. *Muriset* [1923] 2 Ch. 74 (refd).
(8) *Northern Press and Engineering Co.* v. *Shepherd* (1908) 52 Sol. J. 715 (distd).
(9) *Gebrueder Buehler AG* v. *Peter Chi Man Kwong & Ors.* [1987] 1 M.L.J. 356 (refd).

ORIGINATING SUMMONS.

Ng Chai Ngee for the plaintiffs.

Deborah Barker for the defendants.

Cur. Adv. Vult.

Thean J.: The facts in this case are not in dispute and, so far as material, are these. At all material times, the plaintiffs were the lessees of two plots of land, marked on the government resurvey map as lots 658 and 659 of Mukim VI situate at Enterprise Road, Singapore 2262, holding the same under an instrument of lease dated 1 September 1983 from Jurong Town Corporation for a term of 30 years commencing from 16 July 1978. Erected on the land are two warehouses, Warehouse 1 and Warehouse 2, known as No. 19, Enterprise Road, Singapore 2262. Under the lease, the land and the warehouses were to be used for "storage of hardware materials, *e.g.* steel plates, pipes and angles only". The defendants were the mortgagees of the land and premises by virtue of four instruments of mortgages all dated 22 June 1985.

Installed in the warehouses are three Kito overhead cranes, namely, two three-ton overhead cranes in Warehouse 1 and one five-ton overhead crane in Warehouse 2. Kito overhead cranes are manufactured by Kito Company Ltd. of Japan. Each of the three-ton cranes has a long steel girder with a span of approximately 18 metres and each end of the girder rests on an end truck frame. The